FARAD CONTINUATION SHEET.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR.

WRIT PETITION NO.523/2006

Office Notes, office Memoranda of Coram appearances, Court's orders or directions and Registrar's order.	Court's or Judge's order

CORAM: **B.P. DHARMADHIKARI, J.**

DATED : **15.02.2006.**

1. Heard Advocate Shri S.M. Hande for petitioner-defendant, Advocate Shri Abhijeet Deshpande for respondent-plaintiff.

2. The petitioner has challenged the order dated 6.1.2006 passed by Ad-hoc Additional District Judge permitting the respondent-plaintiff to amend the Schedule of property to include the kitchen room admeasuring 10 x 10 feet in it. The learned Counsel

for petitioner contends that no prayer for possession of kitchen room was made at any time before the Trial Court and said kitchen room was not a subject matter of dispute at all. He contends that the issue framed also did not cover the question of possession of kitchen. He contends that his parents had been residing in two rooms and only question in suit was of possession of remaining two rooms in suit house.

3. Advocate Shri Deshpande on the other hand contends that the suit was amended in the year 1996 itself pointing out that during absence of respondent-plaintiff, forcibly possession of kitchen room was taken by the petitioner. He contends that this fact is specifically pleaded and inadvertently only Schedule of the property remained to be amended. He invites attention to prayer clause in the plaint to show that the prayer clause is only to hand over possession of property and the suit property is described in Schedule. He contends that therefore before the

Appellate Court when this mistake was realized, only prayer was made for permission to add kitchen room to the Schedule of property and that has been granted. According to him kitchen room was always part of dispute. He invites attention to the evidence in this respect on record, and also findings recorded by the Trial Court to contend that the respondent was forcibly dispossessed by the petitioner.

4. I find that amendment pointing out subsequent dispossession from kitchen room was allowed by the Appellate Court. The prayer for possession could not be included because the suit property was not mentioned in the schedule and it appears to be only inadvertent omission. The Appellate Court has therefore rightly allowed it. The contention of petitioner that there is no adjudication about the possession of said kitchen room by Trial Court need not be gone into at this stage, because the Appellate Court has only permitted amendment to be

effected. The issue can be considered by the Appellate Court while deciding the Appeal on merits. Subject to these observations, I do not find any merit in the writ petition. Writ petition is dismissed accordingly. No costs.

JUDGE

ssw